



Washington State Water Law

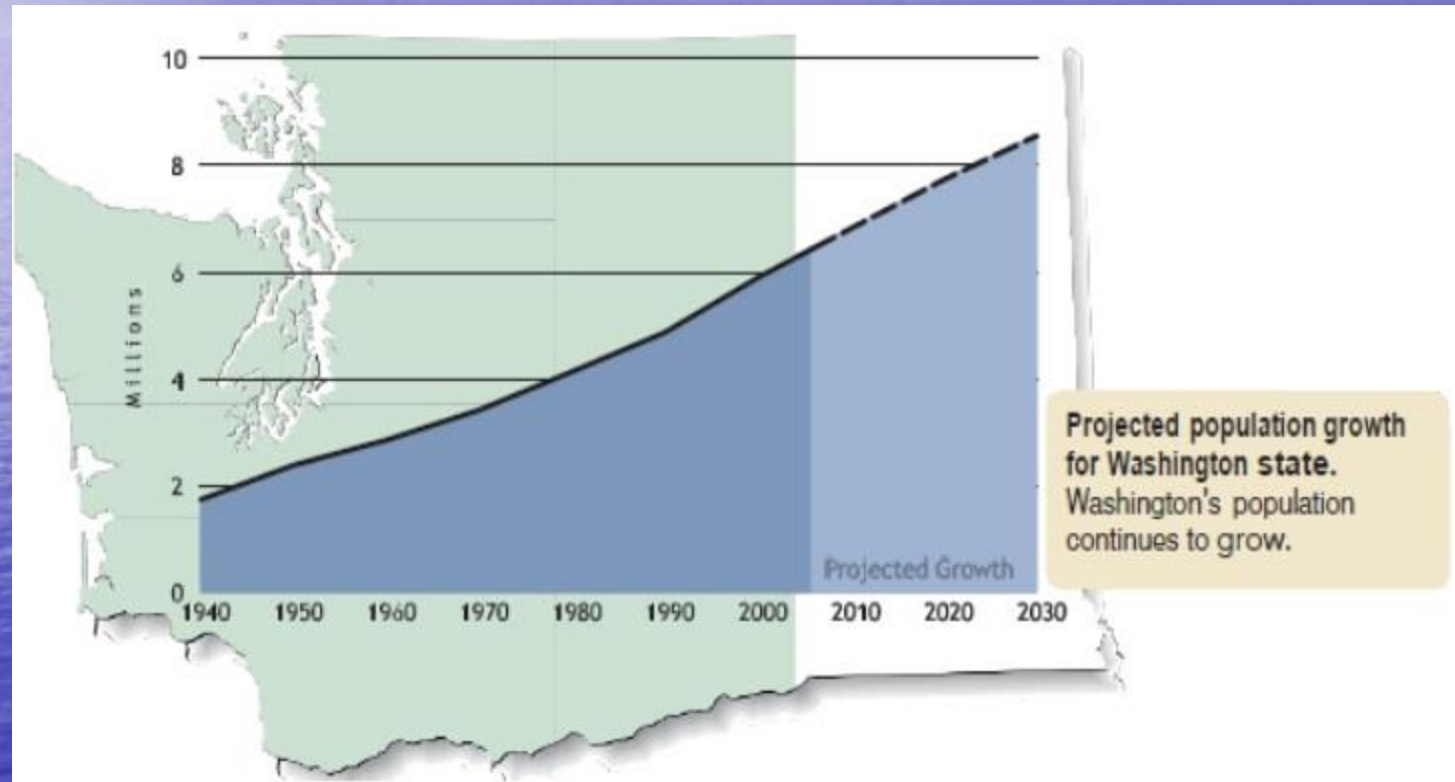
June 15th 2016

John Rose – Water Resources Ecology

Water Rights 101

- Historical background and overview
- Definitions - Permits, Certificates, and Claims
- Permit Exempt wells
- Instream Flow Water Rights
- Criteria for assessing applications for new water rights, and changes to existing rights
- Relinquishment and Abandonment
- Existing and Future Challenges

Why are water issues important?



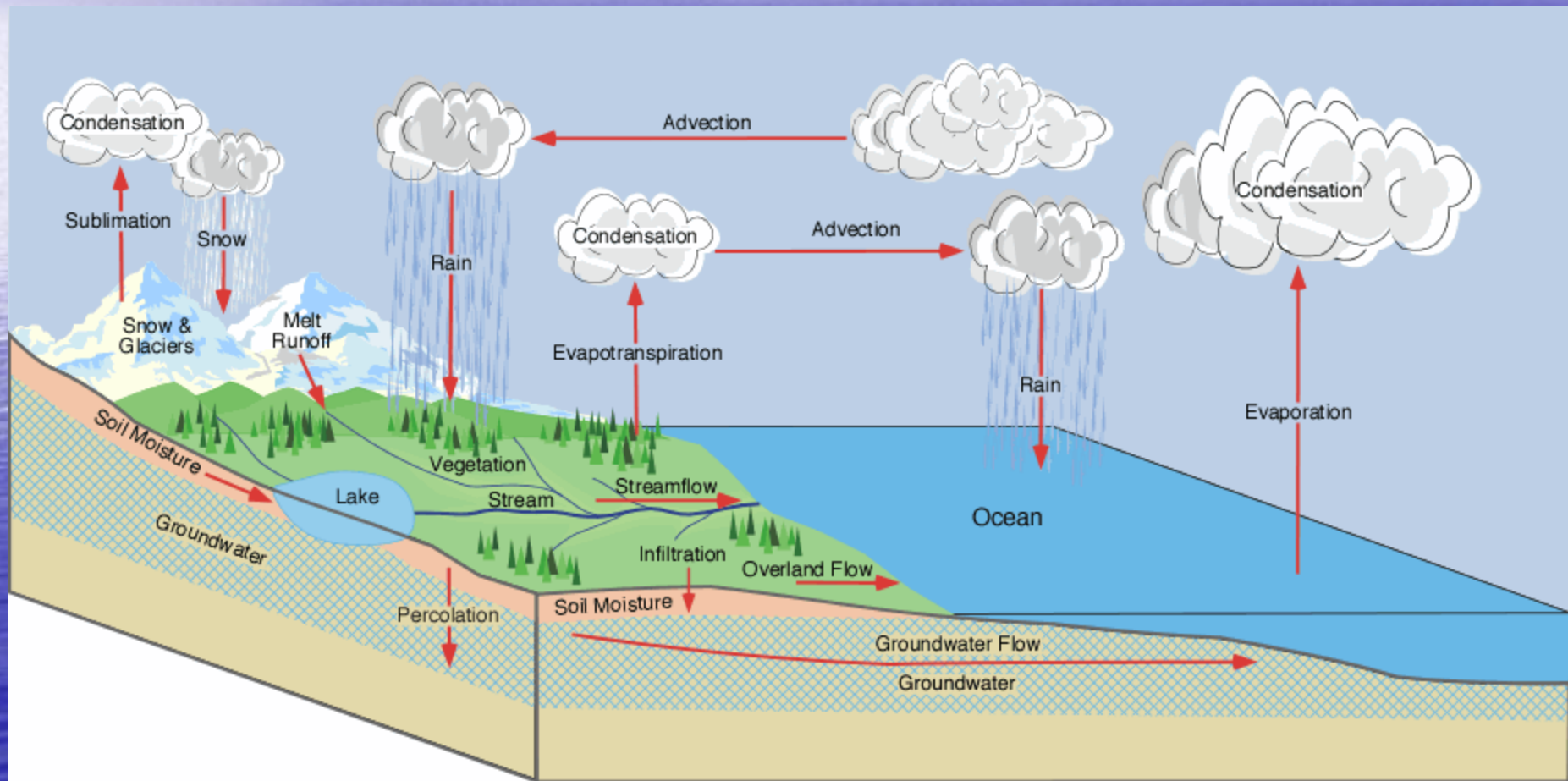
Washington's Growing Demand for Water

Increasing competition for water

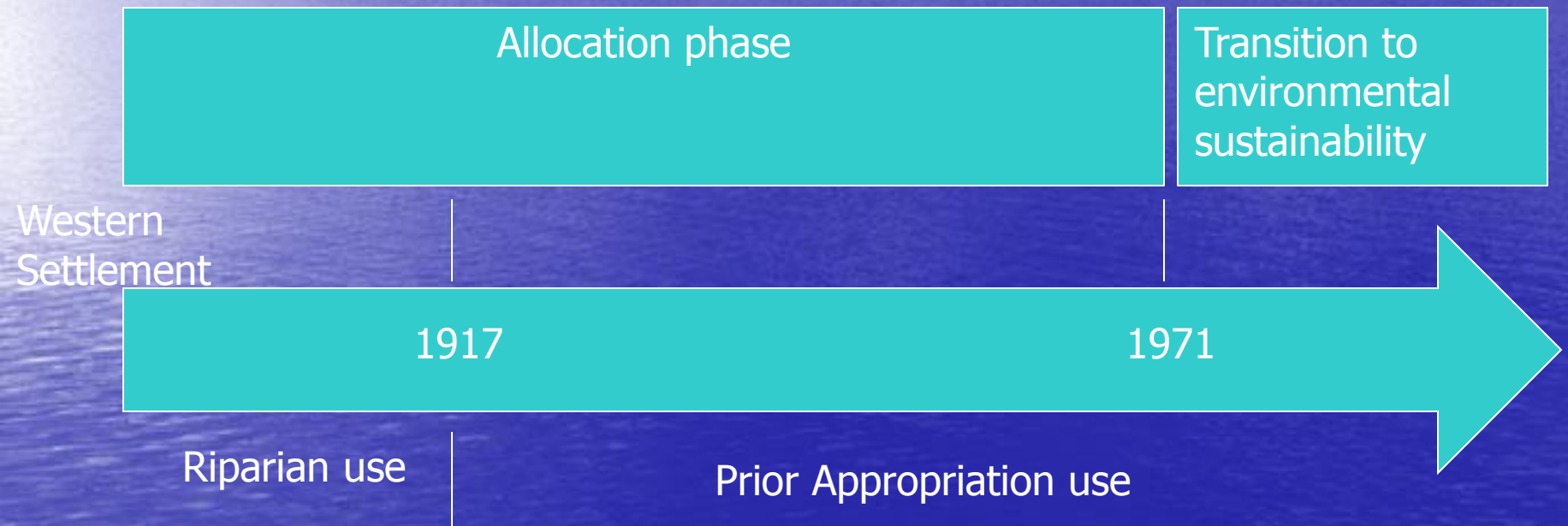
- Irrigation and other human uses
- Fisheries
- Sustainable Environment



Hydrologic Cycle



The Evolution of Washington Water Use



**In the west, whiskey is for drinking, and
water is for fighting over – Mark Twain.**



A Water Right Question

- I own a piece of land that I plan to build on when I retire and had a well drilled 5 years ago. I have a legal source of water, right?
- Not necessarily.
WA's first water code in 1917 for surface water established that a water right is only vested when water is put to beneficial use.

Historical Background

- Water owned in common since Roman times.
- Western Europe and Eastern U.S. adopts Riparian Doctrine
- Western U.S. adopts Prior Appropriation Doctrine in late 19th century.

Surface Water Code - 1917

Ch. 90.03 RCW

Principles of Western water law adopted for Washington:

- “First in time, first in right”
- New uses of water need a permit
- Existing water rights protected
- Water right is appurtenant to the land
- A surface water right is Superior to a groundwater right
- Note: you cannot create a right through illegal use



Ground Water Code - 1945

Ch. 90.44 RCW

- Supplemental to 1917 Surface Water Code
- New uses of ground water need a permit
- Small water uses exempted from permitting process (permit exempt wells). There are no exemptions for surface water.



Ground Water Permit Exemption RCW 90.44.050 (groundwater only)

A permit to withdraw groundwater is necessary except under the following circumstances:

- Stockwatering
- Single or group domestic uses not to exceed 5,000 gallons per day (gpd)
- Industrial uses not to exceed 5,000 gpd
- Irrigation of a non-commercial lawn or garden not to exceed ½ acre in size.

Ground Water Permit Exemption RCW 90.44.050

- Water users withdrawing ground water under the exemption establish a water right equal to the water right they would establish by obtaining a permit from the Department of Ecology.
- The priority of such a water right dates back to the beginning of beneficial use of the water.

Permit Exempt well question

- I have a 40 acres that I have subdivided into 40 1-acre lots with a well on each lot. Each lot is entitled to it's own permit exempt well quantities, right?
- No.
In a WA State Supreme Court case, it was ruled that each project only gets one exemption.

Ecology vs. Campbell & Gwinn 2002

Ground Water Permit Exemption

RCW 90.44.050

- All wells for a given project apply toward the limits of exemption.
- For example, one could not irrigate two acres by installing four wells - each serving 1/2 acre,
- or use 10,000 gallons per day by installing two wells.

What is a water right?

- A water right is a legal authorization to the **beneficial use** of a reasonable quantity of public water during a certain period of time that occurs at a certain place.

So a water right is a limited right

Water Rights “P’s & Q’s”

P’s ~

- point of diversion or withdrawal
- purpose of use
- place of use
- priority date
- Period of use

Q’s ~

- “Q_i” = instantaneous rate (gpm or cfs)
- “Q_a” = annual quantity (afy)

Water Right Types

- **Water Right Certificates** issue to perfected rights under water code.
- **Water Right Permits** issue to allow development under water code.
- **Water right claims** were filed for rights established before the existing permit system.
- **Instream Flow Water Rights** issued to protect rivers and stream levels

What is a Permit?

A permit to appropriate water is—

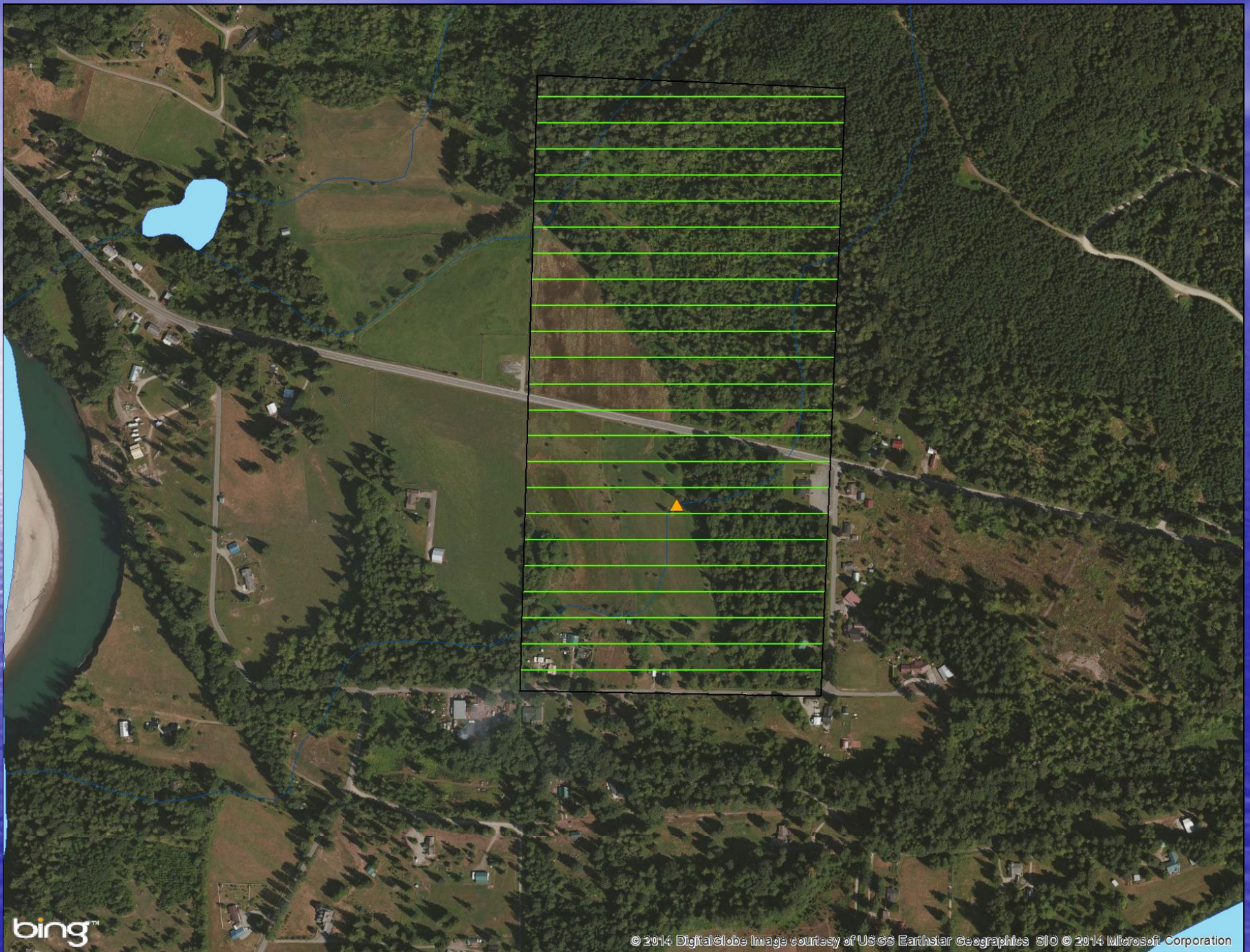
- an undeveloped or not fully perfected right (inchoate),
- which is “an incomplete appropriative right in good standing”
- which “remains in good standing so long as the requirements of law are being fulfilled.”

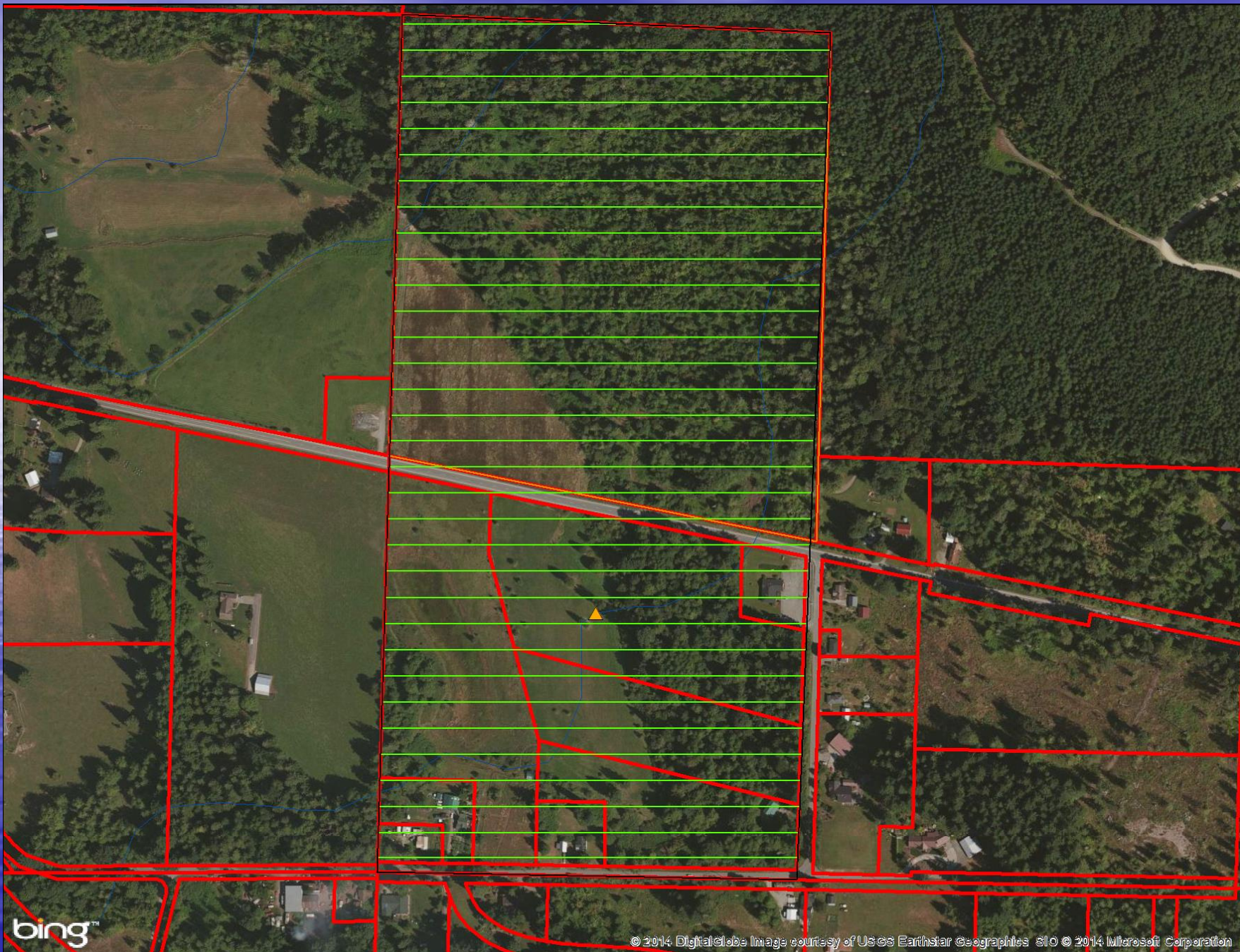
What is a Certificate?

A certificate is --

A **perfected** (developed) water right awarded when the water right holder:

Beneficially uses the amount of water permitted at the location identified for the intended purpose.





What is a Water Right Claim?

- A statement of claim of water use that began before the state Water Codes were adopted.
- A water right claim does not *necessarily* establish a water right – only a statement that the holder believes they have a WR.
- These claims were initially filed under the **1967** Water Right Claims Registration Act (Ch. 90.14 RCW). Reopened in 1979, 1985, 1997

Water Right Claim

- The determination that a claim represents a **vested** right can only be made through an **adjudication**, a legal process conducted through a superior court which determines the priority and extent of existing water rights in a given area.

The claim could represent a real water right if:

- Surface water was used prior to June 7, 1917
- Ground water was used prior to June 7, 1945
- Any of the above has not been lost due to non-use.



DEPARTMENT OF
ECOLOGY
State of Washington

Instream flows: protecting our water supply

https://www.youtube.com/watch?v=-XT3I_cNVvk

Instream Flow Water Right

- A water right for a river basin
- Meant to protect aquatic and wildlife habitat, water quality, and recreational values.
- Set by Ecology after scientific study and stakeholder agreement.
- Equal to all other water rights
- Any water right issued after ISF rule is junior.

Obtaining a new Water Right

After receiving an application Ecology must affirmatively answer all four of the following tests:

- use is beneficial
- water is available, legally and physically
- not detrimental to public interest
- The water right would not impair existing users

Ecology's report recommends approval or denial of permit, then anyone can appeal Ecology's decision for 30 days before permit issued.

Making Changes to an Existing Water Right

- Two Step Process

- Is there a water right to change (tentative determination of the extent and validity, or **How Big is the Water Right?**)
- Is the proposed change allowable

Elements of a Water Right that can be changed

- Source (groundwater or surface water)
- Purpose of Use (irrigation, industrial, domestic etc.)
- Period of Use (seasonal or year round)
- Point of diversion/withdrawal (location)
- Place of Use
- Provisions

Exempt Well Consolidation

- Any person or organization that holds a valid ground water right may with Ecology's approval, consolidate their right with one or more permit exempt water rights.
- This consolidation does not effect the priority date of the water right.

Muni Bill – 2E2SHB 1338

effective 9/9/2003

- Anyone who is classified by WADOH as a Group A public water system has automatically had their rights “clarified” as being for “municipal water supply purposes”.
- Group A - 15 or more residential connections, or at least 25 people for 60 days a year.
- Not subject to relinquishment.

Municipal Water Rights

Recent Water system consolidation Issue

- Non expanding systems might have issues transferring full “paper quantities” of water for consolidation purposes.

Ways that a Water Right can be Lost

- Statutory forfeiture due to nonuse (Chapter 90.14 RCW). Also known as Relinquishment or “Use it or lose it”.
- Abandonment of the right (Common Law).

Water law...

- 2/3 of the water law is not in statute -- it is common law (case law)
- A layer cake compiled over 120 years
- All uses are equal -- the only priority is "first in time is first in right"
- Limited/no recognition by GMA, ESA, other land use planning

Continuing and Future Complications

- Other things affecting water supplies besides consumptive appropriation (land use changes, climate change, historic practices)
- Lack of timely adjudications (no way to clean up the paper to get down to the wet water)
- Unquantified Federal Reserved Rights
- People do not like prior appropriation's "sharp edges"
- New laws, changes to laws, and court decisions
- And on and on and on...!!!

Sources of information

- Ecology's Water Resources Explorer website

Water Resources Explorer

Map Navigation Menu

Search Options Layers

Water Device Points

- ☒ Ground Water Collector
- ☒ Headworks Gravity Flow
- ☒ Irrigation Dam
- ☒ Monitoring Well
- ☒ Reservoir Dam
- ☒ Surface Water Pump
- ☒ Well
- ☒ Other

Unmapped Water Device Points

- ☐ Headworks Gravity Flow
- ☐ Reservoir Dam
- ☐ Well

Water Places of Use

- ☐ Application
- ☐ Certificate
- ☐ Certificate of Change
- ☐ Change Application
- ☐ Change Application in Permit Stage
- ☐ Permit
- ☐ Claim
- ☐ Other

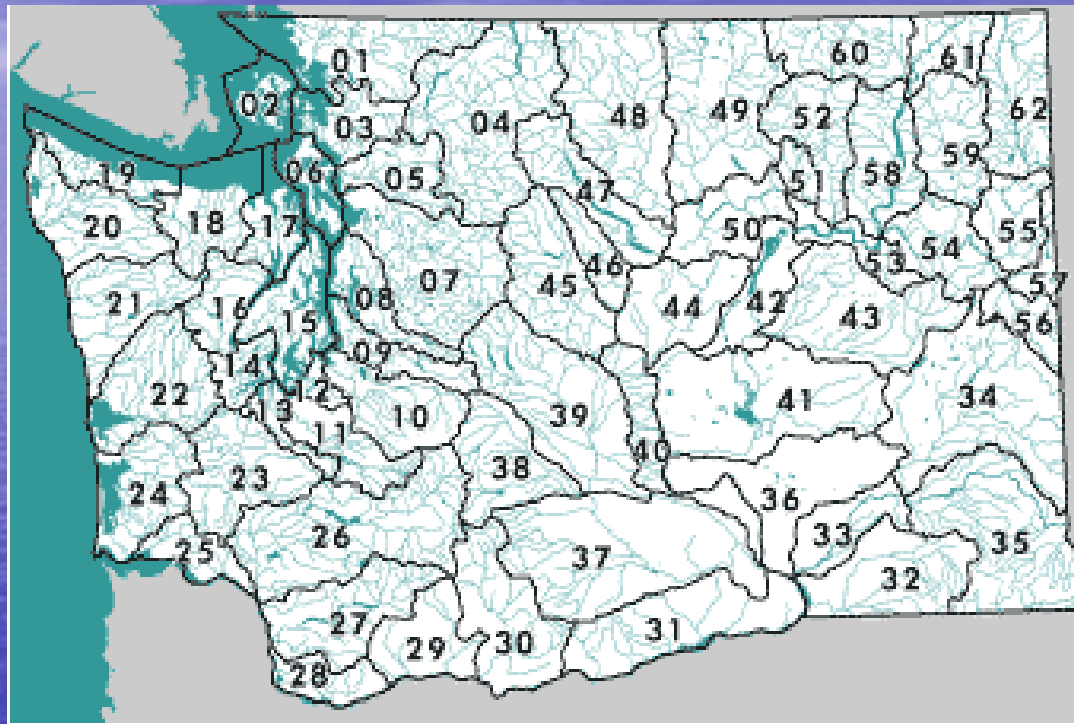
Hydrographic Features

Administrative Boundaries

Record No.	Name	Priority Date	Record Status	Imaged	Metered	Low Flow Provision	Application No.	Permit No.	Certificate No.	Record Type
91-164434CL	ORCAS ISLAND FOUNDATION	...	Active	Y	N	N	...	...	...	Claim L
91-164435CL	ORCAS ISLAND FOUNDATION	...	Active	Y	N	N	...	...	...	Claim L
91-158117CL	BRUCE D FOWLER	...	Active	Y	N	N	...	...	...	Claim L
91-158119CL	BRUCE D FOWLER	...	Active	Y	N	N	...	...	...	Claim L
91-148389CL	JOHN H GOODRICH	...	Active	Y	N	N	...	...	...	Claim L
91-148390CL	A J GOOD	...	Active	Y	N	N	...	...	...	Claim L
91-140028CL	THOMAS H LAVENDER	...	Active	Y	N	N	...	...	...	Claim L
91-133864CL	RICHARD W LANGELL	...	Active	Y	N	N	...	...	...	Claim L
91-129859CL	ROBERT A FOWLER	...	Active	Y	N	N	Claim L
91-179840CL	ROBERT A FOWLER	...	Active	Y	N	N	Claim L

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Water Availability Focus Sheets



http://www.ecy.wa.gov/programs/wr/rights/wrpenapp_avail.html

Finis!

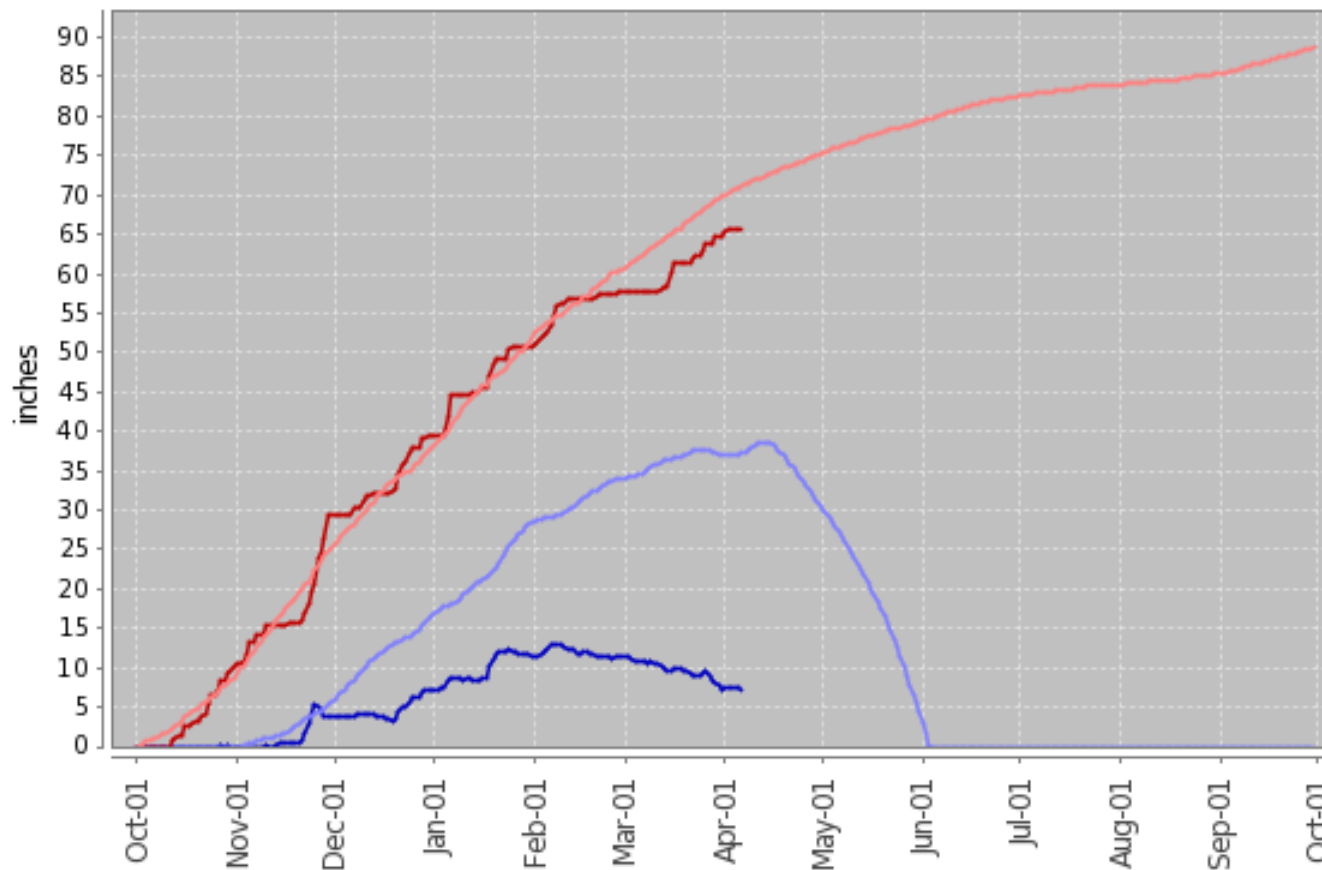
And now for the QUESTIONS!



Washington Drought 2015

Precipitation vs. Snowpack

Station (791) WATERYEAR=2015 (Daily) NRCS National Water and Climate Center - Provisional Data - subject to revision
Mon Apr 06 13:09:49 PDT 2015

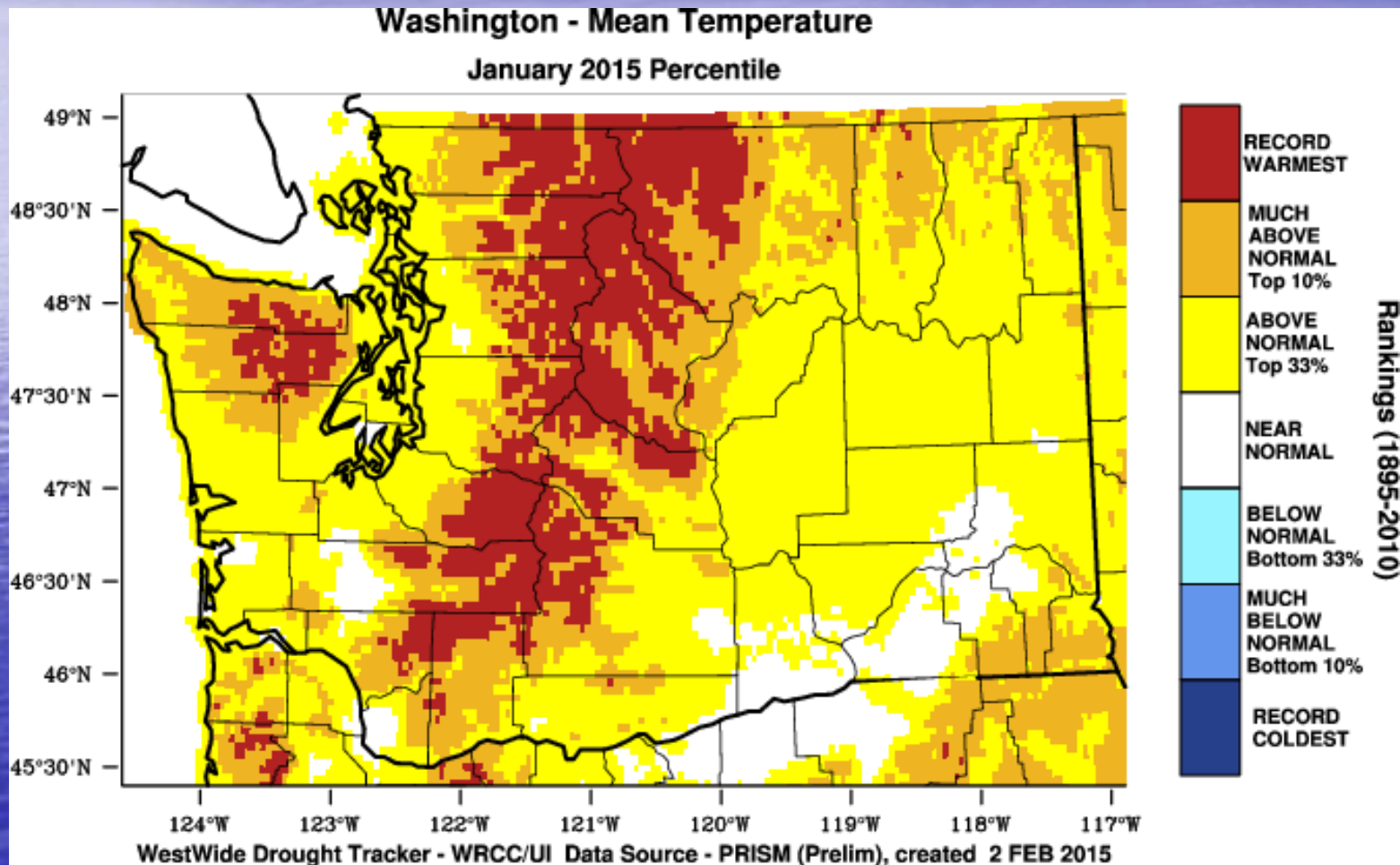


The 2014-15 accumulated SWE (dark blue) and accumulated precipitation (dark red) versus normal (1981-2010) for **Stevens Pass**.



Abnormal Weather conditions

Winter temperatures



Snow Pack Feb 02, 2015

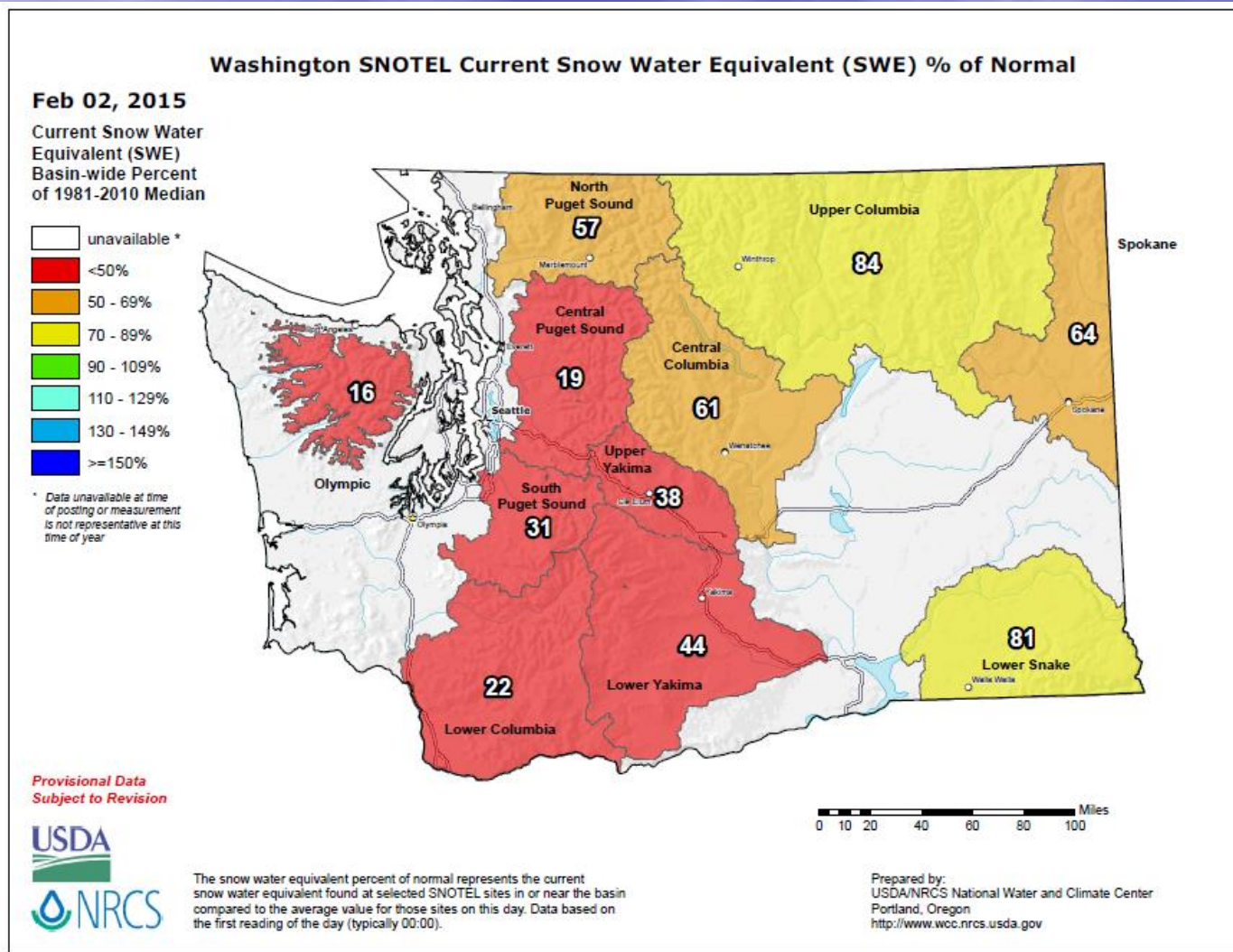
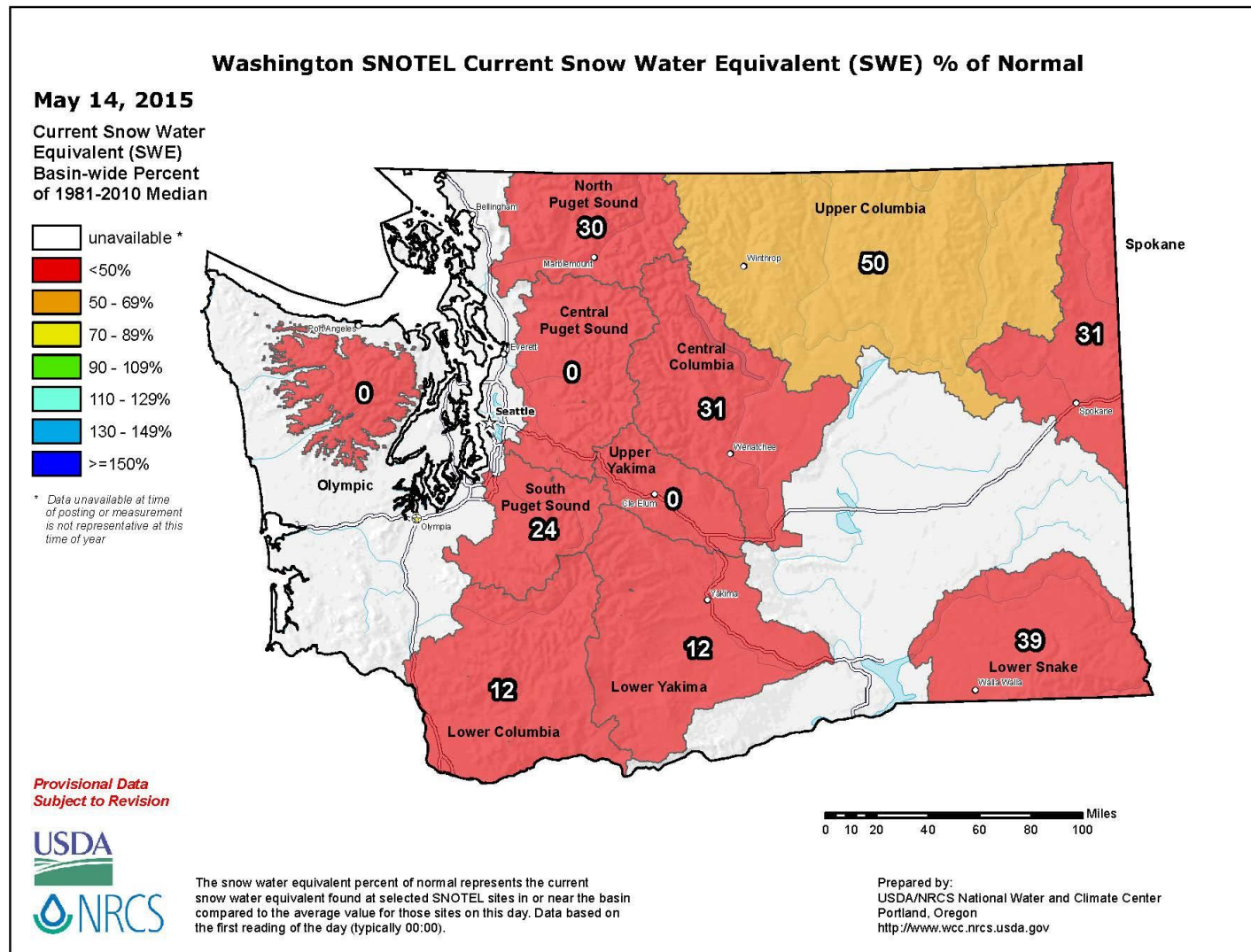


Figure 3: Snowpack (in terms of snow water equivalent) percent of normal for Washington as of 2 February 2015 (from the National Resources Conservation Service).

Snow Pack May 14, 2015



So, the drought is over now that the rains have returned....right?

